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Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333
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SHORELAND ZONING NEWS

Shoreland Zoning Unit, Augusta (207) 287-2111, Bangor (207) 941-4570

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MAINTAINING BUFFER STRIP

The wooded buffers along Maine's waterways are critical to protecting water quality, maintaining wildlife habitat, and preserving the character of these natural resources. A recent survey by the DEP staff examining new residential development on lake shores across the state has highlighted a number of fairly common issues concerning lot clearing prior to development and the maintenance of these buffers.

Buffer Width and Shoreline Setback

All town shoreland ordinances specify minimum wooded buffer width and building setback standards. For example, the typical standard adjacent to great ponds is 100 feet. When the landowner or contractor locates the building right at the 100-foot mark, the foundation excavation and grading will encroach into the 100-foot buffer strip, reducing its width by 10 to 15 feet or more depending on slope. If the owner wants to maintain a cleared area around the building, for maintenance, landscaping, or whatever reason. The building needs to be set back further from the water to maintain the minimum wooded buffer width along the shoreline.

Wooded buffer width reduced by foundation grading in front of camp.

Under-story Removal

Within the shoreline buffer on the residential properties we visited, people generally did a good job of maintaining a well-distributed stand of trees with no clearings to the water, but were less conscientious with maintaining the under-story saplings and lower vegetation. Except for a footpath, existing ground cover less than three feet high must be maintained. Saplings must be maintained if there are not enough trees larger than 2" in diameter to meet the minimum point standard.

Lot Clearing

Most shoreland zoning ordinances specify that the maximum allowed clearing on a residential lot is 10,000 square feet or 25% of the lot, whichever is greater. Our survey indicated that this standard was often being exceeded in order to site the buildings, septic system, lawn, and driveway area. While people generally understood the buffer requirement between the buildings and the water, the clearing limits on the rest of the lot were being overlooked by both the landowners and Code Enforcement Officers.

PASS IT ON

Please share your copy of the *Shoreland Zoning News* with other town officials. We keep our costs and mailing lists manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board, and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.

For more information about the DEP Shoreland Zoning Program, including recent newsletters and other publications, visit our web page at: http://www.state.me.us/dep/blwq/docstand/szpage.htm

QUESTIONS AND ANSWERS

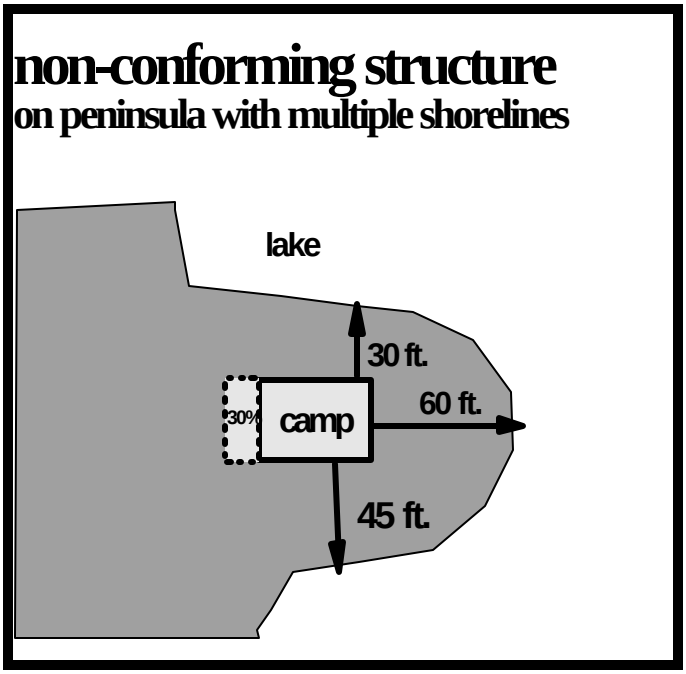
QUESTION #1

There is an existing one-story camp located on a peninsula. The building is set back from the water 30 feet on one side, 45 feet on the opposite side, and 60 feet from the tip of the peninsula. The set-back standard is 100 feet. Can this building be expanded ?

ANSWER:

Yes, but the options are limited. The shoreland zoning law allows legally existing nonconforming structures to be expanded by less than 30% of its size (both volume and floor area) as it existed on January 1, 1989 (the effective date of the law). The law also states that no structure may be expanded so as to increase its nonconformity (i.e. get closer to the water).

In the situation you describe (see diagram below), the building is already too close on three sides, so expansion in those directions is not allowed. The only options left are to expand toward the base of the peninsula or to raise the roof slightly to create a 1/2 story loft. Remember that floor area and volume may not be increased by more than 30%, so a full second floor (100% floor area expansion) could not be permitted.



Got a shoreland zoning question or issue you'd like to share with others? The Question and Answer section of the *Shoreland Zoning News* is a good forum for spreading the word. Just drop a note or telephone message to the shoreland zoning staff at the DEP, and we'll try to include it in an up-coming newsletter.

QUESTION #2

Scenario: A property owner proposes to add a full basement to an existing one-story camp located 20 feet from the river. The property is entirely within the 100-year flood plain. The owner has agreed to move the building as far back from the water as possible, but it will still be within 75 feet of the river. Raising the new basement one foot above the base flood elevation will cause the existing structure to be raised by more than three feet.

Can the basement addition be exempted from the 30% expansion cap for nonconforming structures in order to satisfy the flood ordinance standards?

ANSWER:

No. In order for a project to be approved, it must meet <u>all</u> of the applicable ordinance standards. The Town may not waive one standard in order to satisfy another.

In this case, both the shoreland zoning and flood ordinances require the lowest floor, including basements, to be elevated at least one foot above the base flood elevation. In addition, the nonconforming structure standards specify that basement additions can only be exempt from the 30% expansion rule if the building is relocated away from the water to the greatest practical extent (which the owner proposes to do) <u>and</u> the basement addition does not cause the building to be raised by more than 3 feet. Since it is not possible in this scenario to meet both standards, the proposed basement must be denied. The owner still has the option of adding another type of foundation to further protect the building from flooding, but he can not add a full basement in this flood-prone area.

QUESTION #3

Our Code Enforcement Officer said the garage I want to build has to be at least 100 feet from the lake and 75 feet from a small stream that crosses my property. This is a tiny brook that usually dries up in August and does not show up on the town's map. Can you shed some light on this issue?

ANSWER:

Nearly all shoreland zoning ordinances and the DEP guidelines reference **streams** and **tributary streams**. Development projects adjacent to both of these water bodies must meet the setback and vegetated buffer standards of the ordinance.

Streams are defined as:

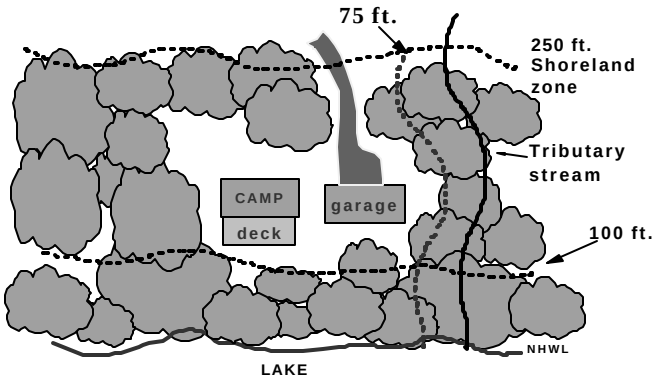
"any free-flowing body of water from the outlet of a great pond, or the point of confluence of 2 perennial streams as depicted by a solid blue line on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, to the point where the body of water becomes a river or flows into another water body or wetland within a shoreland area."

This long definition simply says that any stream flowing from a great pond, and so called, "2nd order" streams are subject to 75-foot Stream Protection districting. These streams are always identified on the Town shoreland zoning map.

A **Tributary Stream** is that portion of any other stream that is located within the shoreland zone, whether or not it is shown on a map. These include the small streams and brooks that typically flow through the shoreland zone to a lake, river, wetland, or the ocean. They are defined as:

"a channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing water-borne deposits on exposed soil, parent material, or bedrock, and which flows to a water body or wetland as defined."

It is these smaller streams that are often overlooked when property is being subdivided or purchased. This can result in a lot being "unbuildable" because the required 75-foot setback and vegetated buffer along the tributary stream was not considered when locating the proposed building site on the lot.



HOLDING TANKS AND THE SHORELAND ZONE

Recently there has been some confusion regarding the use of holding tanks for new residential construction in the shoreland zone. The State Plumbing Code does allow holding tanks at existing residential properties to replace a failed septic system. They are not permitted as first-time systems or for seasonal conversions within the shoreland zone.

The confusion stems from the fact that a number of communities have adopted Municipal Holding Tank Ordinances that allow holding tanks for new construction **outside** the shoreland zone. At least one community has mistakenly approved their use within the shoreland zone as well.

The State Plumbing Code requires municipal holding tanks ordinances to be consistent with the Model Holding Tank Ordinance found in Appendix A of the Plumbing Code (10 CMR 241). Section 4 of the model ordinance specifies, in part, that holding tanks can not be used for seasonal conversion or new construction within the shoreland zone of a major water course. This includes all great ponds, rivers, streams, and tidal waters identified in the municipal shoreland zoning ordinance.

STATE AND LOCAL PERMITS

Over the years, the DEP staff has heard from property owners, municipal officials, and abutting property owners who are confused by state and local permit requirements. Property owners complain that their town officials would not issue them a permit even though the DEP has approved the project. Town officials complain that they wanted to deny a project under the provisions of the local ordinance but felt compelled to issue a permit because the DEP had approved it. Abutters complain that their neighbor is violating the law by not getting all the necessary permits before starting their projects. The common thread running through all these complaints is a general misunderstanding of DEP and Town permitting authority and responsibility.

Municipal officials are responsible for administering the provisions of the local shoreland zoning and other land use ordinances. The DEP is responsible for permitting under the provisions of the Natural Resources Protection Act (NRPA). And landowners are responsible for making sure they have obtained all the necessary permits prior to beginning their project.

As an example, a proposed seasonal camp to be set back 75 feet from a river would require a permit from the town for the building and other improvements, external and internal plumbing permits from the Local Plumbing Inspector, and an NRPA permit from the DEP for the soil disturbance associated with construction less than 100 feet from the shoreline. If the project is also located within the base flood area, a separate permit would also be required under the town's Floodplain Management Ordinance.

In each case, the permit application is reviewed under the specific provisions of the applicable ordinance, law, or code. The approval of one permit does not, and should not, imply the project is approvable under other ordinance or code requirements. Each application is reviewed on its own merits.

To help minimize the confusion, the DEP permit application forms include notes directing landowners to check with local officials for additional permit requirements. In addition, the DEP's Permit-by-Rule standards specify that the permit is not valid unless the project is also allowed under the local shoreland zoning ordinance. Finally, the Model Shoreland Zoning Permit Form developed for municipalities by the DEP and State Planning Office includes a check-off sheet to remind Code Officers and applicants that other permits may be necessary.

While it is ultimately the landowner's responsibility to obtain all the necessary permits prior to construction, it is also true that permitting for home construction or other shoreland project is a rare event for most folks. As such, both state and town officials need to provide as much information and assistance as we can to help the public understand the permitting process, and minimize the confusion.

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